IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 10-10-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL REVISION CASE No.1265 OF 2007

Balakrishnan ... Petitioner

-vs-

Damodaran ... Respondent

Revision under Sections 397 and 401 of the Code of Criminal Procedure.

For petitioner : Mr.C.S.Saravanan
For respondent : Ms.L.Srilekha

J U D G M E N T

This revision has been filed against the judgment, dated 08.05.2007, passed in Criminal Appeal No.274 of 2006 on the file of Additional District & Sessions Court (FTC.No.III), Dharapuram, as against the judgment, dated 10.08.2006, made in C.C.No.89 of 2005, on the file of Judicial Magistrate Court, Dharapuram.

2. Petitioner is the accused in the calendar case, which was taken on file on the basis of a complaint lodged by the respondent, on the strength of dishonour of a cheque, allegedly delivered by the petitioner to the respondent. The said case went against the petitioner in the Judicial Magistrate Court, Dharampuram, which, the petitioner carried in appeal before the Additional Sessions Court (Fast Track Court No.III), Dharapuram, before which Court also, the same result came to be recorded. Aggrieved over the said judgment of the appellate Court, the petitioner has preferred this revision before this Court.

3. Pending revision, the petitioner has produced a compromise memo, duly signed by himself and the respondent/complainant as well as their respective counsel on record, stating that the matter has been compromised between the parties and the respondent is prepared to withdraw the complaint filed by him and that he is not pressing for conviction of the petitioner.

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4. Since the matter has been settled between the parties, they seek permission of this Court to compound the offence and to allow the revision, in view of the subsequent development in the case.

5. At this juncture, the question, which arises for consideration, is, whether the Court can entertain such a request to compound the offence in revisional stage ?

6. Section 147 of the Negotiable Instruments Act runs as, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable. The Section starts with a non-obstante clause, which will have the legal effect of prevail over any provisions in any other statutes, which are in vogue.

7. By means of introduction of the said Section, the legislature has enabled the parties to a case under Section 138 of the Negotiable Instruments Act, to enter into a compromise.

8. At this stage, the scheme of Section 320 Cr.P.C. has to be looked into. Section 320 (1) enumerates the offences under I.P.C., which are made compoundable by the persons mentioned therein. Section 320 (2) contemplates such compounding with the permission of the Court.

9. Pertinent it is to state that Section 320 (6) Cr.P.C. confers powers upon High Court and Sessions Court acting in the exercise of its powers or revision under Section 401 to allow any person to compound any offence which such person is competent to compound under this section.

10. It is to be seen, whether Section 320 Cr.P.C. would have any effect on Section 147 of the Negotiable Instruments Act. The answer will be in the negative, the reason being the Negotiable Instruments Act is a special statute, which has overriding effect to prevail over the provisions of general law. Section 320 Cr.P.C. describes the compoundable and non-compoundable cases with or without the permission of the Court, which are given in the Indian Penal Code and, certainly, the said Section would have no impact on Section 147 of the Act. The term "special law" denotes the law enacted for dealing with specific clause of offences, while general law would govern the procedures dealing with offences under general law.

11. Section 41 IPC defines a special law as a law applicable to a particular subject. While discussing about the compass of the term "special law", the Apex Court observed in Kaushalya Rani v. Gopal Singh, AIR 1964 SC 260 : 1964 (1) CRI.L.J. 152 that the expressions 'general law' and 'special law' are relative terms and referred to a particular subject dealt with by respective act so that it is not possible logically to label any set of laws as being general laws or special law. Hence, the net result is, Section 147 of the Act will prevail over Section 320 IPC.

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12. Merely because the case has come to the stage of revision, nature of the offence would never be changed till a final verdict is rendered. The offence under Section 138 of the Act may be compounded at any stage of the case, even in its final stage.

13. Learned counsel for the petitioner draws attention of this Court to a decision rendered by the Gujarat High Court in Kirpalsingh Pratapsingh Ori v. Balvinder Kaur Hardipsingh Lobanna, 2004 CRI.L.J.3786, wherein, after a thorough analysis of the factors on the subject, it was held as under :

> "Parties in reference to offence under Section 138 read with S.147 of the Act are at liberty to compound the matter at any stage even after the dismissal of the revision application. Even a convict undergoing imprisonment with the liability to pay the amount of fine imposed by the Court and/or under an obligation to pay the amount of compensation if awarded, as per the scheme of N.I. Act, can compound the matter. The complainant i.e., person or persons affected can pray to the Court that the accused, on compounding of the offence, may be released by invoking jurisdiction of High Court under S.482 Cr.P.C. read with Art.226 of the Constitution of India. Merely because the litigation has reached to a revisional stage or that even beyond that stage, the nature and character of the offence would not change automatically and it would be wrong to hold that at revisional stage, the nature of offence punishable under S.138 of the Act, should be treated as if the same is falling under table II of Section 320 I.P.C."

14. This Court is in agreement with the observations made in the above said decision. There is nothing wrong on the part of this Court to entertain the request, for compounding the offence under Section 138 of the Act. The effect of direction of this Court should be towards the benefit of the accused. As per the settled law, the plenary powers and jurisdiction of this Court under Article 226 of the Constitution of India and Section 482 Cr.P.C. shall be exercised to relieve the petitioner of the sentence, by compounding the offence. Therefore, there shall be a direction on the basis of the terms of compromise to the effect that the petitioner need not surrender either before any Court or jail authorities and, instead, he be treated as acquitted of the case.

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15. Under the circumstances, the parties are permitted to enter into a compromise. Accordingly, this revision is allowed, recording the compromise and acquitting the petitioner. Consequently, the connected Criminal M.P.Nos.1 and 2 of 2007 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dixit

To

1. The Additional District and Sessions Court,
(FTC-III), Dharapuram.

2. The Judicial Magistrate,
Dharapuram.

1 cc To Mr.C.S.Saravanan, Advocate, SR.63072.

CRL.R.C.No.1265 OF 2007

SCD(CO)
RVL 23.10.2007

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